

Hon. Richard A. Jones
Hon. J. Richard Creatura

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EL PAPEL LLC, <i>et al.</i> ,)	No. 2:20-cv-01323-RAJ-JRC
)	
Plaintiffs,)	DEFENDANT CITY OF SEATTLE’S
)	SUPPLEMENTAL CROSS-MOTION
vs.)	FOR SUMMARY JUDGMENT RE
)	MOOTNESS AND MOTION TO
BRUCE HARRELL, <i>et al.</i> ,)	MODIFY REPORT AND
)	RECOMMENDATION (DKT. # 141)
Defendants.)	
)	NOTE ON MOTION CALENDAR:
)	APRIL 1, 2022

I. INTRODUCTION AND RELIEF REQUESTED

On September 15, 2021, the Magistrate Judge recommended that the Court grant the City’s motion for summary judgment and dismiss on the merits Plaintiffs’ challenges to three City measures adopted in response to the COVID-19 pandemic. Since then, circumstances have changed: one of the three challenged measures, the City’s eviction moratorium, terminated on February 28, 2022. Because this termination renders moot Plaintiffs’ requests for injunctive and declaratory relief as to the moratorium, the City respectfully asks the Court to modify the Magistrate Judge’s Report and Recommendation (Dkt. # 141) and dismiss those requests as moot. The City offers this motion to supplement its cross-motion for summary judgment (Dkt. # 103) and continues to ask the Court

1 to adopt the Magistrate Judge’s recommendation and dismiss on the merits the balance of Plaintiffs’
 2 case against the City.

3 II. STATEMENT OF FACTS

4 The City’s cross-motion for summary judgment provides a fuller factual context for the
 5 challenged City enactments. *See* City’s Opening/Response Brief on Cross-Motions for Summary
 6 Judgment, Dkt. # 103, pp. 4–10. In response to the COVID-19 pandemic, the City enacted a
 7 moratorium on residential evictions. *Id.*, p. 7. The City also created a defense to evictions within six
 8 months after the termination of the eviction moratorium, where the eviction is based on nonpayment
 9 of rent and the tenant declares they suffered a financial hardship and cannot pay rent (the “six-
 10 month defense”). *Id.*, p. 8. Finally, the City adopted a repayment plan requirement allowing a tenant
 11 who fails to pay rent when due during or within six months after the civil emergency to pay overdue
 12 rent in installments. *Id.*

13 Plaintiffs challenged these enactments, raising Contract Clause and takings claims and
 14 seeking an injunction, declaratory relief, and nominal damages. *See* Complaint for Declaratory and
 15 Injunction Relief, Dkt. # 1. The City extended the eviction moratorium several times during the
 16 pendency of this action. *See, e.g.*, Dkt. #s 72-1, 100-8, 124, 142, and 156.

17 On September 15, 2021, the Magistrate Judge recommended that the Court grant the City’s
 18 motion for summary judgment and dismiss Plaintiffs’ challenges to the City’s enactments on the
 19 merits. *See* Report and Recommendation (“R&R”), Dkt. # 141, p. 30. At that time, the City’s
 20 eviction moratorium was set to expire on September 30, 2021. *Id.*, p. 24. The City subsequently
 21 extended the moratorium through February 28, 2022, at which point the moratorium terminated. *See*
 22 City of Seattle’s Notice of Supplemental Authority Re Termination of City Moratorium, March 1,
 23 2022, Dkt. # 161.

III. AUTHORITY

The Magistrate Judge recommended that all of Plaintiffs' claims against the City be dismissed on the merits in response to the City's motion for summary judgment. R&R, Dkt. # 141, p. 30. The City agrees with the Magistrate Judge's recommended resolution of the merits and continues to agree with the Magistrate Judge's recommendation with respect to Plaintiffs' challenges to the City's six-month defense and repayment plan requirement.

But with respect to Plaintiffs' challenge to the City's eviction moratorium, only Plaintiffs' request for nominal damages properly remains before the Court (and should be dismissed on the merits consistent with the Magistrate Judge's recommendation). Because the City's eviction moratorium terminated on February 28, 2022, Plaintiffs' requests for injunctive and declaratory relief as to the moratorium are moot and must be dismissed on that basis. If the Court disagrees that Plaintiffs' requests for injunctive and declaratory relief as to the moratorium are moot, the Court should nonetheless follow the Magistrate Judge's recommendation and dismiss those requests on the merits.

A. The expiration of the moratorium renders moot Plaintiffs' requests for prospective relief, unless Plaintiffs can show a reasonable expectation that the City will reenact the moratorium.

A case becomes moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). A case that becomes moot at any point during the proceedings is no longer a "case" or "controversy" for purposes of Article III and is outside the jurisdiction of the federal courts. *U.S. v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018).

In determining whether a case is moot, courts treat the voluntary cessation of challenged conduct by the government with more solicitude than similar actions by private parties. *Board of*

1 *Trustees of Glazing Health and Welfare Trust v. Chambers*, 941 F.3d 1195, 1198 (9th Cir. 2019). A
 2 court presumes that the repeal, amendment, or expiration of legislation will render a challenge moot,
 3 unless there is a reasonable expectation that the body will reenact the challenged provision or one
 4 similar to it. *Id.*, 941 F.3d at 1199. Such an expectation must be founded in the record, rather than
 5 on speculation alone. *Id.*

6 The principle that expiration of an enactment generally renders a challenge moot also
 7 applies in the context of executive orders. *Trump v. Hawaii*, 138 S. Ct. 377 (2017). *See, e.g.,*
 8 *Cummings v. DeSantis*, ___ F. Supp. 3d ___, 2020 WL 4815816 at *2–3 (M.D. Fla. Aug. 19, 2020)
 9 (termination of COVID-related business closure orders rendered a request for declaratory judgment
 10 as to those orders moot where the plaintiff failed to show a reasonable expectation that the
 11 restrictions would recur).

12 **B. Plaintiffs can demonstrate no reasonable expectation that the City will reenact**
 13 **the eviction moratorium.**

14 Plaintiffs cannot meet their burden of demonstrating a reasonable expectation that the City
 15 will reenact the eviction moratorium. In King County, 87.8% of residents ages 12 and older (and
 16 84.6% of residents ages 5 and older) have now completed their COVID-19 vaccine series. *See*
 17 Public Health – Seattle and King County, Summary of COVID-19 vaccination among King County
 18 residents (available at <https://kingcounty.gov/depts/health/covid-19/data/vaccination.aspx>, last
 19 visited March 8, 2022). Public health conditions have improved dramatically since the Omicron-
 20 driven peak of COVID-19 cases in early 2022. New COVID-19 cases and hospitalizations in King
 21 County have decreased precipitously since then. *See* Public Health – Seattle and King County,
 22 COVID-19 summary dashboard (available at [https://kingcounty.gov/depts/health/covid-](https://kingcounty.gov/depts/health/covid-19/data/summary-dashboard.aspx)
 23 [19/data/summary-dashboard.aspx](https://kingcounty.gov/depts/health/covid-19/data/summary-dashboard.aspx), last visited March 8, 2022).

1 The widespread relaxation of COVID-related restrictions by many levels of government
 2 confirms that the public health necessity for the moratorium has passed. Effective March 1, 2022,
 3 King County ended its order requiring proof of COVID-19 vaccination or a negative test for entry
 4 into restaurants and bars, indoor recreational events and establishments, or outdoor events. *See*
 5 Public Health – Seattle and King County, Public Health Insider (available at [https://](https://publichealthinsider.com/2022/02/16/vaccination-verification-policy-to-end-as-of-march-1/)
 6 publichealthinsider.com/2022/02/16/vaccination-verification-policy-to-end-as-of-march-1/, last
 7 visited March 8, 2022). Both the State of Washington and King County are ending their indoor
 8 mask mandates on March 11, 2022. *See* Public Health – Seattle and King County, Public Health
 9 Insider (available at [https://publichealthinsider.com/2022/02/28/king-countys-local-indoor-mask-](https://publichealthinsider.com/2022/02/28/king-countys-local-indoor-mask-mandate-to-end-after-march-11/)
 10 [mandate-to-end-after-march-11/](https://publichealthinsider.com/2022/02/28/king-countys-local-indoor-mask-mandate-to-end-after-march-11/), last visited March 8, 2022).

11 Given these trends, COVID-19 conditions are fundamentally different than when the City
 12 instituted the eviction moratorium (when no vaccine was available) or cases peaked in early
 13 2022. *See, e.g., Dixon Ventures, Inc. v. Dept. of Health and Human Services*, ___ F. Supp. 3d
 14 ___, 2022 WL 179012 at *2 (E.D. Ark. January 19, 2022) (dismissing a challenge to a vacated
 15 CDC moratorium as moot where current COVID-19 conditions—particularly the availability of
 16 vaccines and testing—negated a reasonable expectation that a new moratorium would be
 17 enacted). Although the ultimate course of the pandemic cannot be known and government
 18 officials must remain attentive to new public health threats, an expectation at this point in time
 19 that the City would reinstate the moratorium would rest solely on speculation.

20 Besides, the City’s eviction moratorium is not the City’s only tool for addressing the
 21 impacts of the pandemic. The six-month defense, which commenced upon termination of the
 22 moratorium, and the repayment plan requirement mitigate the pandemic’s longer-lasting housing
 23 and economic impacts. The City’s multi-tiered approach reflects a deliberate choice to transition

1 from the moratorium to less expansive measures. Because there is no longer a moratorium for the
2 Court to issue a declaratory judgment against or enjoin, and Plaintiffs can demonstrate no
3 reasonable expectation that the City will reenact the moratorium, Plaintiffs' requests for prospective
4 relief against the City's moratorium are moot.

5 IV. CONCLUSION

6 The City respectfully requests that the Court modify the Magistrate Judge's Report and
7 Recommendation and dismiss as moot Plaintiffs' requests for injunctive and declaratory relief
8 against the City's eviction moratorium, while otherwise adopting the Magistrate Judge's
9 recommendation and dismissing on the merits the balance of Plaintiffs' case against the City.

10 Respectfully submitted March 9, 2022.

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